



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

## DOCUMENT FOR PUBLIC RELEASE

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**Matter of:** CNA Industrial Engineering, Inc.

**File:** B-271034

**Date:** June 7, 1996

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Richard L. Hames, Esq., Davis Wright Tremaine, for the protester.  
Lawrence J. Sklute, Esq., for GeneSys, Inc., an intervenor.  
Steven W. Feldman, Esq., U. S. Army Corps of Engineers, for the agency.  
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Where request for proposals (RFP) for an automated storage and retrieval system stated as a minimum requirement that proposals must demonstrate expertise and experience with the Army's information software system, and the agency stated at a preproposal conference that only expertise and experience with the Army's information software system would meet the RFP's minimum requirement, award to an offeror that had expertise/experience with a similar software system but not the Army's software system was an improper relaxation of the RFP's stated minimum requirement.

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## DECISION

CNA Industrial Engineering, Inc. (CNA) protests award of a fixed-price contract to GeneSys, Inc. (GI) for an automated storage and retrieval system by the Corps of Engineers pursuant to request for proposals (RFP) No. DACA87-95-R-0092. The protester contends that the agency should have rejected GI's proposal as unacceptable because GI did not meet the RFP's minimum qualifications. The protester also contends that the agency improperly downgraded CNA's own proposal during evaluation of proposals.

We sustain the protest.

Issued on August 15, 1995, as a total small business set-aside by the Corps's Huntsville Division, the RFP solicited proposals for installation and testing of an automated storage and retrieval system at the Brooke Army Medical Center, San Antonio, Texas, and for associated maintenance and training services. The primary

objective of the system is to provide efficient service to medical center departments that require supply support; thus, the system will allow for the receipt, storage, distribution, and re-ordering of medical supplies, linens, and pharmaceutical supplies.

The RFP contemplated award of a contract to a single source for turn-key installation of a complete, integrated system comprised of three subsystems--a material distribution subsystem for medical supplies, a linen subsystem and a pharmacy subsystem. The RFP specified that the automated storage and retrieval system and each of the subsystems must interface with the Army's informational software system, known as "TAMMIS," as that software system will receive requests for supplies and release orders from the central warehousing system. The system's components include inventory management software and hardware, automated equipment, controls, system interfacing, debugging software, training, and implementation. The system will use several sophisticated computer software programs to keep track of and manage, among other things, purchasing, inventory, accounting, and management data applications; an elaborate interfacing software program will also be required to integrate the separate subsystems into one complete system.

The closing date for submission of initial proposals was November 17, 1995, and only CNA and GI submitted proposals by that date. Both offers were included in the competitive range, and written discussions were conducted with both offerors. Best and final offers (BAFO) were received and evaluated as follows:

<u>OFFEROR</u>	<u>CONSENSUS SCORE (TECHNICAL/MANAGEMENT)</u>	<u>PRICE</u>
CNA	[DELETED]	[DELETED]
GI	[DELETED] <sup>1</sup>	[DELETED]

The evaluators determined that GI's proposal had [DELETED]. The contracting officer, however, determined that CNA's BAFO was [DELETED]. On January 25, 1996, the contracting officer awarded the contract to GI. A debriefing conference was held with CNA on February 1, and this protest was filed in our Office shortly

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<sup>1</sup>The RFP's evaluation scheme set out the number of points that could be garnered for each of several technical/management subfactors and stated that a total of 205 technical/management points could be accumulated. However, the evaluation team incorrectly gave [DELETED] 10 points rather than the maximum available 5 points set out in the RFP for the training subfactor, thus inadvertently increasing to 210 the maximum available total points.

thereafter. The Corps issued a stop work order to GI pending our decision on the protest.

The protester contends that GI's proposal should have been rejected as unacceptable because GI does not satisfy the RFP's requirement for offerors to have extensive expertise with the Army's TAMMIS system and for offers to state at least one site where the offeror gained TAMMIS interface experience. The protester also contends that the Corps unreasonably downgraded CNA's proposal regarding [DELETED].

The agency acknowledges that GI does not have TAMMIS expertise or experience. However, the agency reports that GI has ample experience with the Air Force's MEDLOG informational software system. According to the contracting officer, the evaluators found that GI's MEDLOG experience was functionally equivalent to TAMMIS experience.<sup>2</sup> In this regard, the contracting officer states that TAMMIS and MEDLOG perform the same functionally, relying on the same file formats for data input/output; both software systems perform inventory management functions at the wholesale and retail level; both systems have similar interface capabilities; the two systems are similar and compatible, and can pass MILSTRIP<sup>3</sup> transactions to each other for medical supply requests; and both systems use the same sources of supply and support the same customers.

The contracting officer also argues that the RFP permitted the agency to consider GI's MEDLOG expertise/experience as an acceptable substitute for meeting the TAMMIS qualifications. The contracting officer points out that the RFP's proposal preparation instructions stated that offerors could propose alternative solutions to meet RFP requirements provided they explained in detail why the alternative solution is acceptable. The contracting officer also states that he relied upon a provision in the evaluation section of the RFP that stated:

"Notwithstanding any other RFP language, the Contracting Officer has reasonable discretion to accept a proposal meeting the Government's true needs that might not otherwise conform with all RFP requirements."

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<sup>2</sup>When requested to supply the protester and our Office with all evaluation documents concerning evaluation of GI's TAMMIS experience/expertise, the Corps replied that no such documents exist. However, in response to the protest, the Corps provided documents, which are unrefuted, supporting its conclusions that TAMMIS and MEDLOG are equivalent systems.

<sup>3</sup>MILSTRIP stands for "Military Standards Requisitioning and Issues Procedures."

The contracting officer asserts that GI's MEDLOG expertise/experience was simply an alternative solution to the TAMMIS requirement, that GI's proposal explained why MEDLOG experience was an acceptable substitute, and that he reasonably determined that MEDLOG expertise/experience met the agency's true needs.

Generally, our Office will question an agency's evaluation of proposals only if the evaluation lacks a reasonable basis or is inconsistent with the RFP's stated evaluation criteria. DAE Corp., Ltd., B-257185, Sept. 6, 1994, 94-2 CPD ¶ 95. We find that the Corps's evaluation of GI's offer was not consistent with the RFP's stated scheme because GI did not satisfy the RFP's minimum expertise/experience requirement. We also find that the RFP overstated the Corps's actual needs regarding the type of expertise/experience that was necessary.

It is a fundamental rule of competitive procurement that all offerors be provided a common basis for submission of proposals. Container Prods. Corp., B-255883, Apr. 13, 1994, 94-1 CPD ¶ 255. When an agency relaxes its requirements, either before or after receipt of proposals, it must issue a written amendment to notify all offerors of the changed requirements. Id. We will sustain a protest where an agency, without issuing a written amendment, relaxes an RFP specification to the protester's possible prejudice (e.g., where the protester would have altered its proposal to its competitive advantage had it been given the opportunity to respond to the altered requirements). Id.

Here, the RFP stated that proposals would be evaluated on technical, management, and price factors and that the technical and management factors together were more important than price. The RFP indicated that the management factor, consisting of three subfactors (experience of the prime and subcontractors, past performance, and personnel), was the most important factor. The RFP also indicated that the experience of the prime and subcontractors subfactor and the past performance subfactor represented more than half of the total evaluation points that could be awarded a perfect proposal.<sup>4</sup>

Under the heading, "Required Minimum Qualifications," the RFP stated (in Appendix K, page A-12) that:

"System implementor must demonstrate the following minimum qualifications:

- Extensive expertise with the US Army Medical Logistics Systems (CPD & TAMMIS) and demonstrated TAMMIS

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<sup>4</sup>The RFP stated that these two subfactors were worth 105 of the 205 total available evaluation points.

interface experience (at least one site where a TAMMIS interface is in place)."

The RFP's specifications also stated in a number of places that the automated storage and retrieval system and each of the software subsystems must interact and interface with the Army's TAMMIS software system. Thus, it was clear from the RFP that the agency's minimum need was for TAMMIS expertise and TAMMIS interface experience. In addition, the agency reaffirmed that only TAMMIS experience would meet its needs at the preproposal conference. At that meeting, a prospective offeror specifically asked:

"Appendix K, page A-12. Must you have actual experience using TAMMIS, or is experience with similar software and approach to be considered?"

The Corps's answer, as memorialized in written preproposal conference minutes, which were signed by the Corps's Huntsville Division's Director of Contracting<sup>5</sup> and which were distributed to all prospective offerors, was:

"Must have actual experience with TAMMIS."

As stated above, to justify accepting GI's offer the contracting officer relies on the proposal preparation instructions statement that alternative solutions to meet government requirements would be considered and on the evaluation scheme statement that the contracting officer could accept a proposal meeting the government's true needs that might not otherwise conform with all RFP requirements. It is not clear exactly what government requirements might be encompassed by the former, or what true needs by the latter, but in our view neither provision properly can be the basis for waiving a specific requirement that was identified in the RFP as a "Required Minimum Qualification" and which companies entering the competition expressly were advised was not waivable. That is, given the clear references in the RFP to the need for TAMMIS experience and the unequivocal confirmation of that requirement at the preproposal conference--"similar software and approach" would not be considered acceptable--we think the agency's reliance on the two RFP provisions in issue to justify waiving the TAMMIS expertise/experience requirement for the awardee is misplaced.

In short, in awarding the contract to GI on the basis of its having expertise/experience with a similar software system, the agency improperly relaxed or waived the terms of the RFP without amending the RFP to notify all offerors of the

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<sup>5</sup>It is unrefuted that the Director of Contracting is the contracting officer's supervisor.

changed requirement, to the likely prejudice of CNA. In this regard, CNA has submitted two affidavits to show that it would have sought competitive bids from several software vendors and probably would have been able to offer the Corps a lower price if it knew that other than TAMMIS expertise and experience were acceptable. See Logitek, Inc.-Recon., B-238773.2; B-238773.3, Nov. 19, 1990, 90-2 CPD ¶ 401. Accordingly, we sustain CNA's protest on this basis.

We recommend that the Corps amend the RFP to allow offers based upon expertise and experience that is equivalent or similar to TAMMIS experience, reopen discussions with CNA and GI, and accept and evaluate revised proposals.<sup>6</sup> If, after evaluating the revised proposals, the agency determines that the contract should be awarded to CNA, the contract with GI should be terminated for the convenience of the government and the contract awarded to CNA; if the evaluation results in a decision in favor of GI, the award to GI may stand. We also recommend that the protester be reimbursed the costs of filing and pursuing its protest. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (1996). The protester should submit its detailed and certified claim for costs to the contracting agency within 90 days of receiving this decision. Bid Protest Regulations, 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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<sup>6</sup>Since we are recommending that the Corps reopen discussions with and accept revised proposals from both offerors, we need not resolve CNA's protest that the agency improperly downgraded its proposal with regard to [DELETED]. We think this and the other matters can be addressed upon reopening of discussions.